

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
and)	
)	Civil No.
STATE OF ARKANSAS,)	
)	
Plaintiff-Intervenor,)	
)	
v.)	
)	
LION OIL COMPANY ,)	
)	
Defendant.)	
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COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), alleges the following:

NATURE OF ACTION

1. This is a civil action brought by the United States against Lion Oil Company (“Lion Oil” or “Defendant”), under Section 113(b) of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. § 7413(b); Section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9603(a); and Section 304 of the Emergency Planning and Community Right-To-Know Act (“EPCRA”), 42 U.S.C. § 11004, for alleged environmental violations at its petroleum refinery located in El Dorado, Arkansas (“El Dorado Refinery”).

2. Upon information and belief, the El Dorado Refinery has been and is in violation of the following environmental statutes and regulations applicable to the petroleum refining industry: (1) the

CAA, 42 U.S.C. § 7401 et seq., specifically Prevention of Significant Deterioration (“PSD”), Part C of Subchapter I of the Act, 42 U.S.C. § 7475, and the regulations promulgated thereunder at 40 C.F.R. § 52.21 (the “PSD Rules”), and the regulations promulgated at 40 C.F.R. § 51.165, Part 51, Appendix 5, and § 52.24 (“PSD/NSR Regulations”); New Source Performance Standards (“NSPS”), 40 C.F.R. Part 60, Subpart A and J, Section 111 of the Act, 42 U.S.C. § 7411 (“Refinery NSPS Regulations”); Leak Detection and Repair (“LDAR”), 40 C.F.R. Parts 60 Subparts VV and GGG, Part 61 Subparts J and V, and Part 63 Subpart F, H, and CC, Section 111 and 112 of the Act, 42 U.S.C. § 7411 (“LDAR Regulations”); National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for Benzene, Section 112 of the Act, 40 C.F.R. Part 61 Subpart FF (“Benzene Waste NESHAP Regulations”); and the Arkansas State Implementation Plans (“SIPs”) which incorporate and/or implement the above-listed federal regulations; (2) Section 103(a) of CERCLA, 42 U.S.C. § 9603(a); and the Emergency Planning and Community Right-To-Know Act (“EPCRA”), 42 U.S.C. § 11004(a).

3. The United States seeks an injunction ordering Lion Oil to comply with the above statutes and the laws and regulations promulgated thereunder, and civil penalties for defendant's past and ongoing violations.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter pursuant to 28 U.S.C. §§ 1331, 1345 and 1355; Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Sections 109(c) and 113(b) of CERCLA, 42 U.S.C. §§ 9609(c), 9613(b); and Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3).

5. Venue is proper in the Western District of Arkansas pursuant to 28 U.S.C. §§ 1391(b), (c), and 1395(a); Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Sections 109(c) and 113(b) of the

CERCLA, 42 U.S.C. §§ 9609(c), 9613(b); and Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3), because the violations alleged occurred at the El Dorado Refinery which is located in this judicial district.

AUTHORITY AND NOTICE TO STATE

6. Authority to bring this action is vested in the United States Department of Justice pursuant to Section 113(b) and 305 of the CAA, 42 U.S.C. §§ 7413(b) and 7605, and pursuant to 28 U.S.C. §§ 516 and 519.

7. Pursuant to Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), notice of the violations of the Arkansas SIP that are alleged in this complaint has been given to the State of Arkansas and to Lion Oil at least 30 days prior to the filing of this complaint.

8. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), notice of the commencement of this action has been given to the appropriate state air pollution control agency in the State of Arkansas.

DEFENDANT

9. Lion Oil Company (“Lion Oil”) is an Arkansas corporation doing business in El Dorado, Arkansas. Lion Oil is engaged in the petroleum business, and owns and operates the El Dorado Refinery located in El Dorado, Arkansas.

10. For the purposes of Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Lion Oil is and has been a “person” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and applicable federal and state regulations promulgated pursuant to these statutes. Lion Oil is an “owner or operator” of the El Dorado Refinery within the meaning of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a), (b), or 329(7) of EPCRA, 42 U.S.C. § 11049(7).

STATUTORY AND REGULATORY BACKGROUND

CLEAN AIR ACT REQUIREMENTS

11. The Clean Air Act established a regulatory scheme designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

12. Section 109 of the Act, 42 U.S.C. § 7409, requires the Administrator of EPA to promulgate regulations establishing primary and secondary national ambient air quality standards ("NAAQS" or "ambient air quality standards") for certain criteria air pollutants. The primary NAAQS are to be adequate to protect the public health, and the secondary NAAQS are to be adequate to protect the public welfare, from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air.

13. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a State Implementation Plan ("SIP") that provides for the attainment and maintenance of the NAAQS.

14. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. These designations have been approved by EPA and are located at 40 C.F.R. Part 81. An area that meets the NAAQS for a particular pollutant is classified as an "attainment" area; one that does not is classified as a "non-attainment" area.

Prevention of Significant Deterioration/New Source Review

15. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration ("PSD") of air quality in those areas designated as attaining the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision-making process. These provisions are referred to herein as the "PSD program."

16. Section 165(a) of the Act, 42 U.S.C. § 7475(a), prohibits the construction and subsequent operation of a major emitting facility in an area designated as attainment unless a PSD permit has been issued. Section 169(1) of the Act, 42 U.S.C. § 7479(1), defines "major emitting facility" as a source with the potential to emit 250 tons per year (tpy) or more of any air pollutant.

17. As set forth at 40 C.F.R. § 52.21(k), the PSD program generally requires a person who wishes to construct or modify a major emitting facility in an attainment area to demonstrate, before construction commences, that construction of the facility will not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount.

18. As set forth at 40 C.F.R. § 52.21(i), any major emitting source in an attainment area that intends to construct a major modification must first obtain a PSD permit. "Major modification" is defined at 40 C.F.R. § 52.21(b)(2)(i) as meaning any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any criteria pollutant subject to regulation under the Act. "Significant" is defined at 40 C.F.R. § 52.21(b)(23)(i) in reference to a net emissions increase or the potential of a source to emit any of the following criteria pollutants, at a

rate of emissions that would equal or exceed any of the following: for ozone, 40 tons per year of volatile organic compounds (VOCs); for carbon monoxide (CO), 100 tons per year; for nitrogen oxides (NO_x), 40 tons per year; for sulfur dioxide (SO₂), 100 tons per year, (hereinafter “criteria pollutants”).

19. As set forth at 40 C.F.R. § 52.21(j), a new major stationary source or a major modification in an attainment area shall install and operate best available control technology ("BACT") for each pollutant subject to regulation under the Act that it would have the potential to emit in significant quantities.

20. Section 161 of the Act, 42 U.S.C. § 7471, requires state implementation plans to contain emission limitations and such other measures as may be necessary, as determined under the regulations promulgated pursuant to these provisions, to prevent significant deterioration of air quality in attainment areas.

21. A state may comply with Section 161 of the Act either by being delegated by EPA the authority to enforce the federal PSD regulations set forth at 40 C.F.R. § 52.21, or by having its own PSD regulations approved as part of its SIP by EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166.

22. Pursuant to PSD regulations, any owner or operator who commences construction or modification of a major source without applying for and receiving approval for such construction or modification is subject to an enforcement action. 40 C.F.R. § 51.166.

23. Pursuant to Section 113(b)(1) of the CAA, 42 U.S.C. § 7413(b)(1), the violation of any requirement or provision of an applicable implementation plan is a violation of the CAA.

24. Whenever any person has violated, or is in violation of, any requirement or prohibition of

any SIP, the United States is authorized to commence a civil action for a permanent or temporary injunction, and/or for a civil penalty of up to \$27,500 per day for each such violation. 42 U.S.C. § 7413(b); Pub. L. 104-134 and 61 Fed. Reg. 69369.

Flaring and New Source Performance Standards

25. Section 111(b)(1)(A) of the CAA, 42 U.S.C. § 7411(b)(1)(A), requires the Administrator of EPA to publish a list of categories of stationary sources that emit or may emit any air pollutant. The list must include any categories of sources which are determined to cause or significantly contribute to air pollution which may endanger public health or welfare.

26. Section 111(b)(1)(B) of the CAA, 42 U.S.C. § 7411(b)(1)(B), requires the Administrator of the EPA to promulgate regulations establishing federal standards of performance for new source of air pollutants within each of these categories. “New Sources” are defined as stationary sources, the construction or modification of which is commenced after the publication of the regulations or proposed regulations prescribing a standard of performance applicable to such source. 42 U.S.C. § 7411(b).

27. Pursuant to Section 111(b)(1)(A) of the CAA, 42 U.S.C. § 7411(b)(1)(A), EPA has identified petroleum refineries as one category of stationary sources that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare.

28. Pursuant to Section 111(b)(1)(B) of the CAA, 42 U.S.C. § 7411(b)(1)(B), EPA has promulgated New Source performance Standards (“NSPS”) for various industrial categories, including petroleum refineries. NSPS requirements for petroleum refineries are codified in 40 C.F.R. Part 60, Subpart J, §§ 60.100-60.109.

29. The provisions of 40 C.F.R. Part 60 Subpart J apply to specified "affected

facilities," including, inter alia, Claus sulfur recovery plants that have a capacity greater than 20 long tons per day and that commenced construction or modification after October 4, 1976, and all fluid catalytic cracking unit catalyst regenerators and fuel gas combustion devices that commenced construction or modification after June 11, 1973. 40 C.F.R. § 60.100(a),(b).

30. 40 C.F.R. § 60.102(a) prohibits the discharge into the atmosphere from any fluid catalytic cracking unit catalyst regenerator of (1) particulate matter in excess of 1.0 kg/1000 kg (1.0 lb./1000 lb.) of coke burn-off in the catalyst regenerator, and (2) gases exhibiting greater than 30 percent opacity, except for one six-minute average opacity reading in any one hour period; except as provided for in 40 C.F.R. § 60.102(b).

31. 40 C.F.R. § 60.103(a) prohibits the discharge into the atmosphere from any catalytic cracking unit catalyst regenerator any gases that contain carbon monoxide ("CO") in excess of 500 ppm by volume (dry basis).

32. 40 C.F.R. § 60.104(b) requires the owner or operator of any affected fluid catalytic cracking unit catalyst regenerator to comply with one of the standards set forth in 40 C.F.R. § 60.104(b)(1), (2), or (3), relating to emissions of sulfur dioxide (SO₂).

33. 40 C.F.R. § 60.104(a)(2) prohibits sulfur recovery plants subject to 40 C.F.R. Part 60, Subpart J with reduction control systems followed by incineration from discharging in excess of 250 ppm of SO₂ by volume (dry basis) at zero percent excess air. 40 C.F.R. § 60.104(a)(2) prohibits sulfur recovery plants subject to 40 C.F.R. Part 60 Subpart J with reduction control systems not followed by incineration from discharging in excess of 300 ppm by volume of reduced sulfur compounds and in excess of 10 ppm by volume of hydrogen sulfide, each calculated as ppm of SO₂ by volume (dry basis) at zero

percent excess air.

34. 40 C.F.R. § 60.104(a)(1) prohibits the burning in any fuel gas combustion device any fuel gas that contains hydrogen sulfide in excess of 230 milligrams per dry standard cubic meter, or, stated in terms of grains per dry standard cubic foot, 0.10. The combustion in a flare of process upset gases or fuel gas that is released to the flare as a result of relief valve leakage or other emergency malfunctions is exempt from the emission limit of 40 C.F.R. § 60.104(a)(1).

35. Pursuant to Section 111(b) of the CAA, 42 U.S.C. § 7411(b), EPA has promulgated general NSPS provisions, codified at 40 C.F.R. Part 60, Subpart A, §§ 60.1-60.19, that apply to owners or operators of any stationary source that contains an "affected facility" subject to regulation under 40 C.F.R. Part 60.

36. 40 C.F.R. § 60.11(d) requires that at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

37. Section 111(e) of the CAA, 42 U.S.C. § 7411(e), prohibits the operation of any new source in violation of an NSPS applicable to such source. Thus, a violation of an NSPS is a violation of Section 111(e) of the CAA.

38. Whenever any person has violated, or is in violation of, any requirement or prohibition of any applicable New Source Performance Standard, Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the United States to commence a civil action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day for each such violation occurring prior to

January 30, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69369, up to \$27,500 per day for violations occurring on or after January 31, 1997.

Leak Detection and Repair

39. Pursuant to Section 111 of the CAA, 42 U.S.C. § 7411, EPA promulgated New Source Performance Standards for Equipment Leaks of VOCs in Petroleum Refineries at 40 C.F.R. Part 60, Subpart GGG. Subpart GGG, in turn, incorporated many of the NSPS standards at 40 C.F.R. Part 60, Subpart VV. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated emission standards for hazardous air pollutants (“National Emission Standards for Hazardous Air Pollutants” or “NESHAPs”) at 40 C.F.R. Part 61, and NESHAPs for source categories at 40 C.F.R. Part 63. The relevant NESHAPs are found at 40 C.F.R. Part 61, Subpart J (for equipment leaks of benzene) and Subpart V (for equipment leaks); and 40 C.F.R. Part 63, Subpart F (for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry), Subpart H (for organic hazardous air pollutants for equipment leaks) and Subpart CC (for hazardous air pollutants from petroleum refineries).

40. The focus of the LDAR program is the refinery-wide inventory of all possible leaking equipment, the regular monitoring of that equipment to identify leaks, and the repair of leaks as soon as they are identified.

41. Whenever any person has violated, or is in violation of, any requirement or prohibition of any applicable New Source Performance Standard or any applicable National Emission Standard for a Hazardous Air Pollutant, Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the United States to commence a civil action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day for each such violation occurring prior to January 30, 1997, and, pursuant

to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69369, up to \$27,500 per day for violations occurring on or after January 31, 1997.

Benzene Waste NESHAP

42. The CAA requires EPA to establish emission standards for each “hazardous air pollutant” (“HAP”) in accordance with Section 112 of the CAA, 42 U.S.C. § 7412.

43. In March 1990, EPA promulgated national emission standards applicable to benzene-containing waste waters. Benzene is a listed HAP and a known carcinogen. The benzene waste regulations are set forth at 40 C.F.R. Part 61 Subparts FF, (National Emission Standard for Benzene Waste Operations). Benzene is a naturally-occurring constituent of petroleum product and petroleum waste and is highly volatile. Benzene emissions can be detected anywhere in a refinery where the petroleum product or waste materials are exposed to the ambient air.

44. Pursuant to the Benzene waste NESHAP, refineries are required to tabulate the total annual benzene (“TAB”) content in their wastewater. If the TAB is over 10 megagrams, the refinery is required to elect a control option for control of benzene.

45. Pursuant to Section 113(b) of the CAA, 42 U.S.C. §7413(b), the United States may commence a civil action for injunctive relief and civil penalties for violations of the Act, not to exceed \$25,000 per day of violation for violations of the CAA. Pursuant to Pub. L. 104-134 and 61 Fed. Reg. 69369, civil penalties of up to \$27,500 per day per violation may be assessed for violations occurring on or after January 30, 1997.

CERCLA Requirements

46. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires a person in charge of a facility

to immediately notify the National Response Center of a release of a hazardous substance from such facility in an amount equal to or greater than the amount determined pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602 (the “reportable quantity”).

47. Section 109(c)(1) of CERCLA, 42 U.S.C. § 9609(c)(1), provides that any person who violates the notice requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), shall be liable to the United States for civil penalties.

EPCRA Requirements

48. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), (b), requires the owner and operator of a facility at which a hazardous chemical is produced, used, or stored, to immediately notify the State Emergency Response Commission (“SERC”) and the Local Emergency Planning Committee (“LEPC”) of certain specified releases of a hazardous or extremely hazardous substance.

49. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires that, as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), the owner or operator shall provide a written follow up emergency notice providing certain specified additional information.

50. Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3), provides that any person who violates any requirement of Section 304 of EPCRA, 42 U.S.C. § 11004, shall be liable to the United States for civil penalties.

FIRST CLAIM FOR RELIEF

(CAA PSD/NSR Violations at FCCUs and Heaters and Boilers)

51. Paragraphs 1 through 49 are re-alleged and incorporated by reference as if fully set forth

herein.

52. Lion Oil owns and operates a petroleum refinery, which involves the physical, thermal, and chemical separation of crude oil into marketable petroleum products. Lion Oil owns and operates fluidized catalytic cracking unit regenerator (“FCCU”), fluid coking unit (“FCU”) a sulfur recovery plant (“SRP”), and heaters and boilers at its El Dorado Refinery.

53. Based on information and belief, the United States alleges the following:

54. Lion Oil’s petroleum refining process results in emissions of significant quantities of criteria air pollutants, including nitrogen oxides (“NO_x”), carbon monoxide (“CO”), particulate matter (“PM”), sulfur dioxide (“SO₂”), as well as volatile organic compounds (“VOCs”) and hazardous air pollutants (“HAPs”), including benzene. The primary sources of these emissions are the FCCUs, the FCU, process heaters and boilers, and the SRP.

55. Lion Oil’s El Dorado Refinery is a “petroleum refinery” in accordance with Section 169(1) of the CAA, 42 U.S.C. § 7479(1), which defines “major emitting facility” for certain listed stationary sources as a source with the potential to emit 100 TPY or more of any criteria air pollutant. The Company’s petroleum refinery is a major emitting facility with the potential to emit in excess of 100 tpy of NO_x, PM, and SO₂ which are listed criteria air pollutants.

56. At all times relevant to this Complaint, the El Dorado Refinery was located in an area that was designated as “Class II” under Section 162(b) of the Act, 42 U.S.C. § 7472(b), and that has attained the National Ambient Air Quality Standards for Ozone, of which Nox is a precursor, SO₂, and PM under Section 107(d) of the Act, 42 U.S.C. § 7407(d).

57. At all times relevant to the Complaint, and on numerous occasions since the

commencement of operations, Lion Oil has failed to fully and accurately identify the emissions from its petroleum refinery of one or more criteria pollutants.

58. During the time period relevant to this Complaint, upon information and belief Lion Oil has modified its FCCUs, FCU, heaters and boilers, and SRPs at its El Dorado Refinery.

59. Upon information and belief, each modification was a "major modification" within the meaning of 40 C.F.R. § 52.21(b)(2) to existing major stationary sources that resulted in a significant net emissions increase of (i) NO_x, SO₂, PM, PM₁₀, and CO from the FCCUs regenerator; and (ii) SO₂ from the sulfur recovery plant; and (iii) NO_x and SO₂ from the heaters and boilers.

60. Since the initial construction or major modification of: (i) the FCCUs; (ii) the SRP; and (iii) the heaters and boilers, Lion Oil has been in violation of Section 165(a) of the CAA, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21, and the corresponding state implementation plans, by failing to undergo PSD/NSR review for the FCCUs, the SRPs, and the heaters and boilers, by failing to obtain permits, and by failing to install the best available control technology for the control of those pollutants for which a significant net emissions increase occurred.

61. Unless restrained by an Order of the Court, these violations of the Clean Air Act and the implementing regulations will continue.

62. Pursuant to 42 U.S.C. § 7413(b), the violations of Lion Oil, as set forth above, subject them to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Clean Air Act prior to January 31, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69369, to injunctive relief and civil penalties of up to \$27,500 per day per violation for violations occurring on or after January 31, 1997.

SECOND CLAIM FOR RELIEF

(CAA/NSPS Violations at Fluidized Catalytic Cracking Units)

63. Paragraphs 1 through 49, and 55 through 67 are re-alleged and incorporated by reference as if fully set forth herein.

64. Lion Oil is the "owner or operator," within the meaning of Section 111(a)(5) of the CAA, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of a fluidized catalytic cracking unit regenerator at the El Dorado Refinery ("El Dorado FCCU Regenerator").

65. The El Dorado FCCU Regenerator is a "fluid catalytic cracking unit catalyst regenerator" as defined in 40 C.F.R. § 60.101(n), and a "stationary source" within the meaning of Sections 111(a)(3) and 302(z) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7602(z).

66. The El Dorado FCCU Regenerator is an "affected facility" within the meaning of 40 C.F.R. §§ 60.2 and 60.100(a), and a "new source" within the meaning of Section 111(a)(2) of the CAA, 42 U.S.C. § 7411(a)(2).

67. The El Dorado FCCU Regenerator is subject to the General Provisions of the NSPS, 40 C.F.R. Part 60, Subpart A, and to the Standards of Performance for Petroleum Refineries, 40 C.F.R. Part 60, Subpart J.

68. The El Dorado FCCU Regenerator is subject to the emission limitations set forth in 40 C.F.R. §§ 60.102(a), 60.103(a), and 60.104(b).

69. 40 C.F.R. § 60.102(a) prohibits the discharge into the atmosphere from any fluid catalytic cracking unit catalyst regenerator of (1) particulate matter in excess of 1.0 kg/1000 kg (1.0

lb./1000 lb.) of coke burn-off in the catalyst regenerator, and (2) gases exhibiting greater than 30 percent opacity, except for one six-minute average opacity reading in any one hour period; except as provided for in 40 C.F.R. § 60.102(b).

70. 40 C.F.R. § 60.103(a) prohibits the discharge into the atmosphere from any catalytic cracking unit catalyst regenerator any gases that contain carbon monoxide (“CO”) in excess of 500 ppm by volume (dry basis).

71. 40 C.F.R. § 60.104(b) requires the owner or operator of any affected fluid catalytic cracking unit catalyst regenerator to comply with one of the standards set forth in 40 C.F.R. § 60.104(b)(1), (2), or (3), relating to emissions of sulfur dioxide (SO₂).

72. Based upon information and belief, Lion Oil has violated 40 C.F.R. §§ 60.102(a), 60.103(a) and/or 60.104(b), and thus Section 111 of the CAA, at its El Dorado FCCU Regenerator by not complying with the emissions standards set forth in those sections.

73. Unless restrained by an order of the Court, these violations of the CAA and the implementing regulations will continue.

74. Pursuant to 42 U.S.C. § 7413(b), the violations of Lion Oil, as set forth above, subject them to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Clean Air Act prior to January 31, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69369, to injunctive relief and civil penalties of up to \$27,500 per day per violation for violations occurring after January 31, 1997.

THIRD CLAIM FOR RELIEF - CAA

(CAA/NSPS Violations at the El Dorado Sulfur Recovery Plant)

75. The allegations in Paragraphs 1 through 49, and 55 through 79 are hereby re-alleged and incorporated by reference as if fully set forth herein.

76. Lion Oil is the "owner or operator," within the meaning of Section 111(a)(5) of the CAA, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of a sulfur recovery plant ("SRP"), located at the El Dorado Refinery ("El Dorado SRP").

77. The El Dorado SRP is a "Claus sulfur recovery plant" as defined in 40 C.F.R. § 60.101(i), and a "stationary source" within the meaning of Sections 111(a)(3) and 302(z) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7602(z).

78. The El Dorado SRP has a capacity of more than 20 long tons of sulfur per day.

79. The El Dorado SRP is an "affected facility" within the meaning of 40 C.F.R. §§ 60.2 and 60.100(a), and a "new source" within the meaning of Section 111(a)(2) of the CAA, 42 U.S.C. § 7411(a)(2).

80. The El Dorado SRP is subject to the General Provisions of the NSPS, 40 C.F.R. Part 60, Subpart A, and to the Standards of Performance for Petroleum Refineries, 40 C.F.R. Part 60, Subpart J.

81. The El Dorado SRP is subject to the emission limitation set forth in 40 C.F.R. § 60.104(a)(2)(i).

82. Based on information and belief, Lion Oil has emitted into the atmosphere gases containing in excess of (1) 250 ppm by volume (dry basis) of sulfur dioxide at zero percent excess air, or (2) 300 ppm by volume of reduced sulfur compounds, from the El Dorado Refinery SRP, in violation of 40 C.F.R. § 60.104(a)(2) and Section 111(e) of the CAA, 42 U.S.C. § 7411(e).

83. Unless restrained by an order of the Court, these violations of the CAA and the implementing regulations will continue.

84. Pursuant to 42 U.S.C. § 7413(b), the violations of Lion Oil, as set forth above, subject it to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Clean Air Act prior to January 31, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69369, to injunctive relief and civil penalties of up to \$27,500 per day per violation for violations occurring on or after January 31, 1997.

FOURTH CLAIM FOR RELIEF

(CAA/NSPS Violations at Flaring Devices and Heaters and Boilers)

85. The allegations in Paragraphs 1 through 49, and 55 through 89 are hereby re-alleged and incorporated by reference as if fully set forth herein.

86. Lion Oil is an "owner or operator," within the meaning of Section 111(a)(5) of the CAA, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of flaring devices and heaters and boilers located at the Covered Refinery.

87. The flaring devices and heaters and boilers are "fuel gas combustion devices" as defined

in 40 C.F.R. § 60.101(g), and "stationary sources" within the meaning of Sections 111(a)(3) and 302(z) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7602(z).

88. The flaring devices and heaters and boilers are "affected facilities" within the meaning of 40 C.F.R. §§ 60.2 and 60.100(a), and "new sources" within the meaning of Section 111(a)(2) of the CAA, 42 U.S.C. § 7411(a)(2).

89. The flaring devices and heaters and boilers are subject to the emission limitation set forth in 40 C.F.R. § 60.104(a)(1).

90. Lion Oil has burned in the flaring devices and heaters and boilers at the Covered Refinery, fuel gas that contained hydrogen sulfide in excess of 230 milligrams per dry standard cubic meter, or, stated in terms of grains per dry standard cubic foot, 0.10, in violation of 40 C.F.R. § 60.104(a)(2) and Section 111(e) of the CAA, 42 U.S.C. § 7411(e).

91. Unless restrained by an order of the Court, these violations of the CAA and the implementing regulations will continue.

92. Pursuant to 42 U.S.C. § 7413(b), the violations of Lion Oil, as set forth above, subject them to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Clean Air Act prior to January 31, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69369, to injunctive relief and civil penalties of up to \$27,500 per day per violation for violations occurring on or after January 31, 1997.

FIFTH CLAIM FOR RELIEF

**(CAA/NSPS: 40 C.F.R. § 60.11(d))
(Failing to Operate and Maintain the SRP, the FCCU Regenerators,
the Heaters and Boilers and the Flaring Devices
in a Manner Consistent with Good Air Pollution Control Practice)**

93. The allegations in Paragraphs 1 through 49, and 55 through 97 are hereby re-alleged and incorporated by reference as if fully set forth herein.

94. Upon information and belief, Lion Oil has emitted unpermitted quantities of SO₂, CO, PM and PM₁₀, from the El Dorado FCCU; and has emitted unpermitted quantities of SO₂ from its heaters and boilers. These pollutants were emitted under circumstances that did not represent good air pollution control practices, in violation of 40 C.F.R. § 60.11(d).

95. Unless restrained by an order of the Court, these violations of the Act and the implementing regulations will continue.

96. Pursuant to 42 U.S.C. § 7413(b), the violations of Lion Oil, as set forth above, subject them to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Clean Air Act prior to January 31, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69369, to injunctive relief and civil penalties of up to \$27,500 per day per violation for violations occurring after January 31, 1997.

SIXTH CLAIM FOR RELIEF

(Leak Detection and Repair Requirements)

97. The allegations in Paragraphs 1 through 49, and 55 through 101 are re-alleged and incorporated by reference as if fully set forth herein.

98. Lion Oil is required under 40 C.F.R. Part 60, Subpart GGG, to comply with standards set forth at 40 C.F.R. § 60.592, which references standards set forth at 40 C.F.R. §§ 60.482-1 to 60.482-10, and alternative standards set forth at 40 C.F.R. §§ 60.483-1 to 60.483-2, for certain refinery equipment in light liquid and gas and/or vapor service, constructed or modified after January 4, 1983.

99. Pursuant to 40 C.F.R. § 60.483-2(b)(1), an owner or operator of valves in light liquid and gas and/or vapor service must initially comply with the leak detection monitoring and repair requirements set forth in 40 C.F.R. § 60.482-7, including the use of Standard Method 21 to monitor for such leaks.

100. Pursuant to 40 C.F.R. Part 61 Subpart J, Lion Oil is required to comply with the requirements set forth in 40 C.F.R. Part 61, Subpart V, for certain refinery equipment in light liquid and gas and/or vapor benzene service.

101. Upon information and belief, Lion Oil has failed to accurately monitor the valves and other components in light liquid and gas and/or vapor service at the Covered Refineries as required by Standard Method 21, to report the valves and other components in light liquid and gas and/or vapor service that were leaking, and to repair all leaking VOC valves and other components in light liquid and gas and/or vapor service in a timely manner.

102. Upon information and belief, Lion Oil's acts or omissions referred to in the preceding Paragraphs constitute violations of 40 C.F.R. Part 60, Subparts GGG and VV; 40 C.F.R. Part 61,

Subparts J and V; and 40 C.F.R. Part 63, Subparts F, H, and CC.

103. Unless restrained by an order of the Court, these violations of the Act and the implementing regulations will continue.

104. Pursuant to 42 U.S.C. § 7413(b), the violations of Lion Oil, as set forth above, subject them to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Clean Air Act prior to January 31, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69369, to injunctive relief and civil penalties of up to \$27,500 per day per violation for violations occurring after January 31, 1997.

SEVENTH CLAIM FOR RELIEF

(Benzene Waste NESHAP)

105. The allegations in Paragraphs 1 through 49, and 55 through 109 are hereby re-alleged and incorporated by reference as if fully set forth herein.

106. At all times relevant to this Complaint, Lion Oil has asserted that the Total Annual Benzene (“TAB”) at El Dorado Refinery is less than 10 megagrams per year, and that the El Dorado Refinery is not subject to the control requirements of 40 C.F.R. § 61.342.

107. Upon information and belief, Lion Oil failed to comply with the requirements of the Benzene Waste NESHAP that are applicable to facilities with a TAB of less than 10 megagrams per year.

108. Unless restrained by an order of the Court, these violations of the Act and the

implementing regulations will continue.

109. Pursuant to 42 U.S.C. § 7413(b), the violations of Lion Oil, as set forth above, subject it to injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Clean Air Act prior to January 31, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69369, to injunctive relief and civil penalties of up to \$27,500 per day per violation for violations occurring after January 31, 1997.

EIGHTH CLAIM FOR RELIEF

(July 2000 Inspection)

110. Paragraphs 1 through 49, and 55 through 114 are re-alleged and incorporated by reference.

111. In July 2000, the EPA inspected the El Dorado Refinery and determined that Lion Oil violated the Act and the regulations promulgated thereunder. Specifically, EPA determined that Lion Oil did not comply with the following standards set forth under 40 C.F.R. Part 60:

112. 40 C.F.R § 60.482-6(a)(1) requires that each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in § 60.482-1(c). Upon information and belief, Lion Oil operated its El Dorado Refinery with at least 7 open-ended valves subject to the requirements 40 C.F.R § 60.482-6(a)(1) which were not equipped with caps or plugs.

113. 40 C.F.R. § 60.486(e) requires that information pertaining to all equipment subject to the requirements in §§ 60.482-1 to 60.482-10 shall be recorded in a log that is kept in a readily accessible

location. Upon information and belief, at the time of the July 2002 inspection, Lion Oil had at least 10 components subject to the requirement(s) in §§ 60.482-1 to 60.482-10 which were not logged.

114. For each violation referred to in the preceding paragraphs, Lion Oil is subject to a civil penalty of up to \$27,500 per day, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

NINTH CLAIM FOR RELIEF

(CERCLA)

115. Paragraphs 1 through 10, and 50 through 51 are re-alleged and incorporated by reference.

116. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires a person in charge of a facility to immediately notify the National Response Center of a release of a hazardous substance from such facility in an amount equal to or greater than the amount determined pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602 (the “reportable quantity”).

117. Lion Oil is “in charge of” the El Dorado Refinery, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

118. Upon information and belief, Lion Oil has failed to immediately notify the National Response Center of releases from its El Dorado Refinery of hazardous substances in an amount equal to or greater than the reportable quantity for those substances.

119. The acts or omissions referred to in the preceding paragraph constitute violations of Section

103(a) of CERCLA, 42 U.S.C. § 9603.

120. Pursuant to Section 109(c)(1) of CERCLA, 42 U.S.C. § 9609(c)(1), Lion Oil is liable for a civil penalty of up to \$25,000 per day for each day each violation of Section 109(a) of CERCLA continues , and up to \$75,000 per day for each day that any second or subsequent violation continues.

TENTH CLAIM FOR RELIEF

(EPCRA)

121. Paragraphs 1 through 10, 52 through 54 are re-alleged and incorporated by reference.

122. Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a), (b), requires the owner and operator of a facility at which a hazardous chemical is produced, used, or stored, to immediately notify the State Emergency Response Commission (“SERC” - State Authority) and the Local Emergency Planning Committee (“LEPC” - Local Authority) of certain specified releases of a hazardous or extremely hazardous substance.

123. Lion Oil is the “owner and operator” of the El Dorado Refinery, within the meaning of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a), (b).

124. The El Dorado Refinery is a “facility” at which “hazardous chemicals” are produced, used, or stored, within the meaning of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a), (b).

125. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires that, as soon as practicable after

a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), the owner or operator shall provide a written follow up emergency notice providing certain specified additional information.

126. Upon information and belief, there have been “releases,” of “hazardous substances,” within the meaning of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 1104(a), (b), at the El Dorado Refinery. These hazardous substances included, without limitation, hydrogen sulfide, anhydrous ammonia, and sulfur dioxide, and were released in an amount greater than the reportable quantity. On each of these occasions, Lion Oil failed to immediately notify the SERC (State Authority) of a release of a hazardous or extremely hazardous substance as required by Section 304(a) of EPCRA, 42 U.S.C. § 11004(a); and to immediately notify the LEPC (Local Authority) of a release of a hazardous or extremely hazardous substance as required by Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

127. The acts or omissions referred to in the preceding paragraphs constitute violations of Section 304 of EPCRA, 42 U.S.C. § 11004(a), (b).

128. Pursuant to Section 325(b) of EPCRA, 42 U.S.C. § 11045(b)(3), Lion Oil is liable for civil penalties in an amount not to exceed \$25,000 per day for each day the violation continues and in an amount not to exceed \$75,000 per day for each day that any second or subsequent violation continues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States, respectfully requests that this Court:

1. Order Lion Oil to immediately comply with the statutory and regulatory requirements cited in

this Complaint, under the CAA, CERCLA and EPCRA;

2. Order Lion Oil to take appropriate measures to mitigate the effects of its violations;
3. Assess civil penalties against Lion Oil for up to the maximum amounts provided in the applicable statutes; and
4. Grant the United States such other relief as this Court deems just and proper.

Respectfully submitted,

Date: _____

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Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Date: _____

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FOR THE UNITED STATES OF AMERICA

Date:_____

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Date:_____

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FOR THE UNITED STATES OF AMERICA

FOR THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY:

Date: _____

JOHN PETER SUAREZ
Assistant Administrator for
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United States Environmental
Protection Agency
Washington, D.C. 20460

FOR THE PLAINTIFF-INTERVENOR THE STATE OF ARKANSAS

Date: _____

Chief (Legal)
Arkansas Department of Environmental Quality
P.O. Box 8913
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